argued that there was a failure to comply with the rules of natural justice when the respondent decided not to issue the offer to alienate the land. I do not see any injustice at all in this case being done to the appellant. What the appellant tried to do was to try to take away 50 acres of the said land which had, not only already been approved to Ko-Nelayan, but with fish ponds already built on the land by Ko-Nelayan as well. Whatever it is, when the respondent decided not to issue the offer to alienate land to the appellant, he was, as I ruled earlier, exercising a discretionary power under s 9 of the Ordinance for which the rules of natural justice do not pertain. There is no need to hear anyone when deciding whether or not to issue the offer to alienate land. It would have been a different matter if the appellant had already been issued the offer to alienate land and the respondent sought to revoke it; it is not the case here. There is also no merit in this ground.

Upon the premises, I dismiss the application of the appellant with costs to the respondent to be taxed.

SYARIKAT GEMAS PALM OIL TRADING

v.

ALCAN GETAH MALAYSIA SDN. BHD.

HIGH COURT, KUALA LUMPUR
HJ ABU MANSOR BIN ALI J.
[ORIGINATING MOTION NO R8-25-95 OF 1989]
26 AUGUST 1992

ARBITRATION: Application to set aside awards of Umpire and Appeal Board and for interim stay of execution of awards by applicant - Application for leave to enter judgment against applicant in terms of awards and to enforce judgment by respondent. - Whether the usage of PORAM Rules for Arbitration Act 1952 confers the right to legal representation in the arbitration - Whether the rules and constitution of PORAM are ultra vires s. 32 of the Arbitration Act 1952 in providing for exclusion of the Arbitration Act.

SOCIETIES: Whether the Palm Oil Refiners Association of Malaysia (PORAM) is a society under the Societies Act 1966 - Whether PORAM required to lodge a set of rules or constitution with the Registrar of Societies before registration - Whether the Societies Act 1966 also requires the lodging of PORAM Rules for Arbitration and Appeal with the Registrar of Societies - Consideration of ss. 7(3), 14(1) and Schedule 1 of the Societies Act 1966.

ARBITRATION: Allegation that respondent did not commence the arbitration but was given award - Whether any party misled - Whether documents marked 'without prejudice' could be relied on by the Appeal Board - Whether the amendment of the award by the Appeal Board was unlawful and contrary to natural justice - Whether parties initiating arbitration proceedings under the PORAM Rules for Arbitration and Appeal are required to fill the form in Appendix I of the Rules - PORAM FOB contract not signed by both parties - Whether there was in effect an arbitration agreement - Whether the arbitration proceedings was commenced within the period required by s. 1 r. 3(2) of the PORAM Rules of Arbitration and Appeal.

ARBITRATION: By s. 4 r. 1(1) of the PORAM Rules of Arbitration and Appeal an award is to be made within 30 days of the closure of proceedings - Whether the Umpire made the award outside the prescribed time - Whether there was re-submission of the respondent's case - Whether re-submission was in compliance with proper procedure - Whether the Arbitrators including the Umpire and the Appeal Board failed to adhere to the

issues in making their claim and award - Whether the test on the sample of the product sold by the applicant to the respondent was conducted improperly.

ARBITRATION: Allegation that Chairman of the Appeal Board had a pecuniary interest in the matter - Whether Chairman biased - Whether Chairman misconducted himself in sitting on the Appeal Board - Consideration of ss. 13(1) and 32 of the Arbitration Act 1952, ss. 1 rr. 3(2) and (5), ss. II rr. IV(1) and (5), s. 4 r. I(1) and Appendix I of the PORAM Rules of Arbitration and Appeal.

The dispute between the applicant and the respondent arose from a contract for the purchase of 500 metric tons of palm acid oil by the respondent from the applicant on 25 March 1987. The respondent filed its statement of claim and the applicant its statement of defence. The parties also exchanged documents and letters entitled "correspondence." Initially the dispute was referred to two arbitrators and subsequently to an Umpire. Being dissatisfied with the award of the Umpire made on 1 March 1988 the applicant appealed to the PORAM Appeal Board which on 5 July 1989 made an award in favour of the respondent. Thereafter the applicant by originating motion dated 14 August 1989 applied to set aside the awards of the Umpire and the Appeal Board respectively and further applied for an interim stay of execution of the said awards. The respondent by an application dated 10 April 1990 applied pursuant to the Arbitration Act 1952 (Revised 1972) for leave to enter judgment against the applicant in terms of the awards granted on 1 March 1988 by the Umpire and on 5 July 1989 by the Appeal Board. The respondent also prayed for leave to enforce both awards in the same manner as a judgment of the Court and for costs.

Held:

[1] The Palm Oil Refiners Association of Malaysia (PORAM) is a society registered under the Societies Act 1966. Before there can be registration, the said Association is required to lodge with the Registrar of Societies a set of its rules or constitution. The said rules and constitution lodged contain the aims and objects of the society, details of qualification of membership, details of income and such rules and constitution must make provisions for all matters as set out in schedule 1 of the Act. PORAM had lodged a set of such rules and constitution with the Registrar of societies.

[2] There was no support for the applicant's contention that pursuant of s. 7(3) and s. 14(1) of the Societies Act 1966 PORAM Rules for Arbitration and Appeal should have also been lodged with the Registrar of Societies as those sections only deal with amendments. It was clear from those provisions that only the rules and constitution pursuant to which a society is formed or regulated or amendments thereto have to be lodged with the Registrar of Societies.

[3] There is no right to legal representation enshrined in the Arbitration Act 1952. Section 13(1) of the Arbitration Act 1952 provides "... unless otherwise expressed every arbitration agreement shall, where applicable, be deemed to include a provision that all parties subject to legal objection be examined by the arbitrator." Legal objection there cannot mean a legal right to representation in the arbitration. The prohibition to legal representation is practised in many trade arbitrations, for example, the FOSFA Rules of Arbitration and Grain and Feed Trade Association Rules. The arbitrator denied both sides the opportunity to make representations. He had not acted unfairly but acted even handedly.

[4] In this case the parties have agreed to be bound by the PORAM FOB Rules of Contract, and in the circumstances the applicant also agreed to the exclusion of the Arbitration Act 1952 when contrary to PORAM's Rules.

[5] Pursuant to the direction of the Appeal Board at its proceedings on 18 October 1988 the respondent put in the offending "without prejudice" submissions in response to submissions filed by the applicant's solicitors. Once the letter of 21 January 1988 was produced the "without prejudice" cloak was lifted and the Appeal Board could peruse and rely on the documents.

[6] The Umpire when making the award on 1 March 1988 granted interest at 12% per annum to run 14 days after the date of the award until realisation but the Appeal Board when delivering its award on 5 July 1989 stated it was upholding the award but awarded costs to be paid by the applicant. The respondent sought clarification *vide* their letter of 14 July 1989. The interest of 12% per annum running 14 days after the award granted by the Umpire would have continued as the Appeal Board upheld the entire award. The Appeal Board did on 16 October 1989 confirm the interest granted by

the Umpire until 5 July 1989 and thereafter reduced it to 10% per annum. The Appeal Board's letter of 16 October 1989 was copied to the applicant but the applicant never complained. If the Appeal Board had the power to give a decision on the appeal then it must by implication have the power to give an order on interest.

[7] The Appeal Board had correctly at page 4 of its award explained that the Form in Appendix I was expressly to be used by parties who had not initially agreed to be bound by the PORAM Rules but have certain disputes arising out of their contract and wish to refer the same to arbitration under PORAM. The parties had by agreeing to contract on PORAM FOB terms agreed to arbitrate under the PORAM Rules for Arbitration and the Rules require no further form or letter to be submitted.

[8] Although a PORAM FOB contract was not signed by both parties it was sufficient that the contract notes issued specifically provide that the PORAM FOB applies. Mere incorporation by reference suffices. The applicant had referred to their telex of 17 July 1987 to PORAM admitting that they had contracted on PORAM FOB terms and the applicant could not be heard now to say otherwise.

[9] After the closure of the proceedings on 26 January 1988 the Umpire made his award on 1 March 1988. That award was outside the time limit required by s. 4 r. 1(1) of the PORAM Rules of Arbitration and Appeal (PORAM Rules) requiring an award to be made within 30 days of the closure of proceedings but s. 1 r. 5 of the PORAM Rules gives the Umpire the sole discretion to waive any of the time limits set thereunder. The Appeal Board had also held that the award was good in view of r. 5 above.

[10] The Appeal Board considered the allegation of "re-submission" and found that the alleged "re-submissions" were made available to the applicant on 26 January 1988. This was sufficient time before the award was finally made on 1 March 1988. The PORAM Rules for Arbitration and Appeal, particularly s. II r. IV(5) provides that the Arbitrator and Umpire shall decide which party is to provide further statements and may fix the time limit for parties to comply. The telex of 21 & 25 January 1988 where the respondent was required to supply the contract for sale of palm sludge oil with their buyers in Hamburg and the subsequent telex of 21 January 1988 by PORAM reconfirms the need for these documents supporting the respondent's claim and followed the proper procedure pursuant to s. II r. IV(5).

[11] The Arbitrators, Umpire and Appeal Board had before them the Palm Oil Research Institute of Malaysia's (PORIM) analysis on the sample of the product sold by the applicant to the respondent which confirmed that the product was not palm acid oil but was instead palm sludge oil. It was a term of PORAM FOB contracts that in the implementation and working out of this contract analysis by PORIM is final. The methods adopted as to the obtaining of samples to enable PORIM to carry out the analysis has not been unfair to any party. The analysis has been on samples provided by both parties through surveyors. Before coming to its decision as to the product sold the Arbitrators and Umpire conducted a thorough and in depth investigation before coming to its conclusion.

[12] The applicant had not been able to show pecuniary interest or bias. The possibility of such allegation had been considered by the Appeal Board and the Appeal Board stated that it must be remembered that PORAM provides for consideration of disputes by members of the same trade and in the circumstances it was natural for members to know and have dealings with each other. This is a far cry from saying that either the Umpire or the Chairman of the Appeal Board had a direct interest in the matter being arbitrated upon or in the parties to the arbitration.

[13] In the circumstances the applicant had failed to show an error on the face of the award to entitle them to set aside the award.

[Application to set aside awards refused. Application for leave to enforce judgment against applicant allowed with cost]

Cases referred to:

Ganda Edible Oils Sdn Bhd v. Transgrain B.V. [1988] 1 MLJ 428 ***(foll)***

Tan Tong Meng (Pte) Ltd v. Artic Builders & Co (Pte) Ltd [1986] 2 MLJ 241 ***(cit)***

Pinnock Brothers v. Lewis & Peat, Ltd [1923] 1 KB 690 ***(cit)***

Legislation referred to:

Arbitration Act 1952, s. 13(1)

PORAM Rules of Arbitration and Appeal, ss. 7(3), 13(1), 14(1), 32, 1 rr. 3(2), 5, 4 r. 1(1), II r. IV(5),

Societies Act 1966, ss. 7(3), 14(1)

For the applicants - Usha Kulasegaran; M/s. Ranjit, Thomas & Kula
For the respondents - Jeyanthini Kannaperan; M/s. Shearn Delamore & Co

JUDGMENT

Hj Abu Mansor bin Ali J:
In the applicants' originating motion dated 14 August 1989 enclosure (2) the applicants applied for the following orders:

The Award by the Umpire on 1 March 1988, made between the parties to the above-mentioned arbitration and the Award made by the Poram Appeal Board on 5 July 1989, between the parties to the above-mentioned Appeal be:

(a) set aside on the following grounds namely:

1. That the said Awards do not deal with all the matters referred to the Umpire and the Appeal Board respectively for their decision;
2. That the said Awards are bad on the face thereof for uncertainty;
3. That the said Awards are bad on the face thereof because the principles therein stated as the principles of law according to which the said Umpire and the said Appeal Board professed to make their respective Awards are erroneously stated and applied;
4. That the said Umpire and the said Appeal Board made their respective Awards well-knowing that the same were contrary to law;
5. That the said Umpire and the said Appeal Board exceeded their authority by including matters in their respective Awards which were not within the terms of the arbitration agreement;
6. Both the Awards were *ultra vires* the PORAM Rules of Arbitration and Appeal;
7. Both the said Awards were in excess of and/or in error of and/or in absence of jurisdiction of the Umpire and the Appeal Board respectively;
8. Both the said Awards are in breach of the Rules of Natural Justice;
9. Both the said Awards are *ultra vires* the Federal Constitution and null and void by reason of the applicant being deprived of the right to be legally represented;
10. The Award of the Appeal Board was procured through misconduct because of bias;
11. The Appeal Board was in error of law and/or error of jurisdiction and/or misconducted itself in failing to give sufficient weight and consideration to the grounds of appeal submitted by the applicant;
12. Both the said Awards are unsupportable on the facts and the law, bad in law, null and void and of no effect.

(b) that in the interim, there be a stay of execution of the said Awards.

In enclosure (9) dated 10 April 1990 the respondents pursuant to the Arbitration Act 1952 (Revised - 1972) applied for an Order:

(i) that the respondents be granted leave to enter judgment against the applicants in the terms of the Award dated 1 March 1988 by the Umpire and 5 July 1989 by the Poram Appeal Board and to enforce both Awards in the same manner and same effect as a judgment of this Honourable Court.

(ii) And that the applicants do pay the costs of this application and of any judgment which may be entered hereunder.

The originating motion is supported by the affidavit of Lim Meow Fatt affirmed on the 14 August 1989. Lim is the Managing Partner of the applicants, who are palm oil traders at No 13, Main Road, Gemas, Johore. The respondents are a trading firm at No 117, Jalan P. Ramlee, Kuala Lumpur.

The application herein arises from:

(a) the Arbitration Award of the Umpire made on the 1 March 1988 in terms of the Award (page 9 of the Appeal Record filed by the applicant with the Appeal Board of the Palm Oil Refiners Association of Malaysia (PORAM)) for the purpose of its appeal from the decision/award of the Umpire, the said Appeal Record is annexed as exhibit "GPO-1"; and

(b) the Award made on 5 July 1989 by the said Appeal Board of the said Appeal, a copy whereof is annexed hereto as exhibit "GPO-II".

The dispute between the applicant and the respondent was referred initially to two (2) Arbitrators; and subsequently to an Umpire.

The respondent filed its statement of claim and the applicant filed its statement of defence. The parties also exchanged documents and letters entitled "Correspondence".

The dispute between the applicant and the respondent arises from a contract for the purchase of 500 metric tons of palm acid oil by the respondent from the applicant on 25 March 1987 in accordance with the following table:

Tonnage	:	500 (Five Hundred) Metric Tons -2% More Or Less At Vessel's Option
Quality	:	Palm Acid Oil
Specifications	:	TFM 95% MIN Basis 97% With Reciprocal Allowance 1:1, M + i 3% MAX, FFA 50% MIN
Packing	:	In Bulk
Shipment	:	April 1987
Destination	:	
Price	:	477.70 Malaysian Ringgit Per Metric Ton FOB Port Klang (South)
Terms	:	Basis Shipped Weight and Quality final Other Terms As Per PORAM FOB Contract
Special Conditions	:	Payment By Bank Draft Lodged With Palm Intelligence In Exchange For Negotiable Documents.

The applicant being dissatisfied with the Decision/Award of the Umpire appealed to PORAM Appeal Board on the following grounds:

(i) The Decision/Award of the Umpire is null and void by reason of s. 4(I)(1) of the PORAM Rules of Arbitration and Appeal which requires the Umpire to make his Decision/ Award within 30 days of the closure of the hearing or proceedings.

(ii) The closure of hearing or proceedings was on 26 January 1988 but the Award was only made on 1 March 1988 - more than 30 days after such closure.

Before proceeding with this matter in substance, the applicant in enclosure (2) wished to raise what she termed as "preliminary objections in law". The preliminary objections so-called are issues raised in the affidavit of Lim Meow Fatt sworn on 26 November 1991 enclosure (27). The issues are in:

(1) Paras 4, 5, 6, and 7 - PORAM Appeal Board is *ultra vires*, the PORAM Rules and Constitution are *ultra vires*, the Societies Act 1966 and also

(2) in para 10 of enclosure (27) applicant raised the point PORAM Rules and Appeals are *ultra vires*, the Arbitration Act and in

(3) para 11 of enclosure (27) contains the applicants' complaint that certain "without prejudice" letters were in fact used in the Arbitration proceedings when they can only be used in limited circumstances, if at all.

I find merit in respondent's contention that the Palm Oil Refiners Association of Malaysia (PORAM), is a society registered under the Societies Act 1966. Before there can be registration, the said Association is required to lodge with the Registrar of Societies a set of its Rules or Constitution. The said Rules and the Constitution lodged contain the aims and objects of the Society, details of qualification for membership, details of income and such Rules and Constitution must make provisions for all matters as set out in Schedule I of the Act. I find PORAM has lodged a set of such Rules and Constitution with the Registrar of Societies. I cannot find support in the applicants' contention that pursuant to s. 7(3) and s. 14(1) of the said Act that PORAM Rules for Arbitration and Appeal should have also been lodged with the Registrar of Societies as those sections only deal with amendments. It is clear by those provisions that only the Rules and Constitution pursuant to which a Society is formed or regulated or amendments thereto that have to be lodged with the Registrar of Societies. It is also clear that the PORAM Rules for Arbitration and Appeal are in existence for all to choose. Members and non-members are free to exercise a choice to use those Rules. I agree with the submission of the respondents that I am bound by the Supreme Court case in *Ganda Edible Oils Sdn. Bhd. v. Transgrain B.V.* [1988] 1 MLJ 428 to say that the issue of PORAM Appeal Board was *ultra vires*, the PORAM Rules and Constitution and in turn *ultra vires* the Societies Act had not been raised specifically. I agree with respondents' Counsel's submission that the Supreme Court had considered in that case the PORAM Rules for Arbitration and Appeal and Awards made under such rules and upheld the arbitrator's decision therein.

I come now to the said issue raised by the appellant, i.e.:

(ii) PORAM Rules for Arbitration and Appeal is *ultra vires* the Arbitration Act 1952 disallowing legal representation in its Arbitration and Appeal Proceedings. Section II Rule IV(1) of PORAM Arbitration and Appeal Rules disallows legal representation at a hearing stating that it is the objective of the Rules to settle trade disputes by people who are in some ways directly connected with the respective trades or related matters. The applicant contended that the prohibition of legal representation is *ultra vires* the Arbitration Act 1952. Does the Arbitration Act 1952 confer a right to legal representation?

I find merit in the respondent's submission there is no such right enshrined. Section 13(1) of the Act provides: "unless otherwise expressed every arbitration agreement shall, where applicable, be deemed to include a provision that all parties subject to legal objection be examined by the arbitrator". I find that the legal objection there cannot mean a legal right to representation in the Arbitration. It is also noted that the prohibition to legal representation is practised in many trade arbitrations, for example, the FOSFA Rules of Arbitration and Grain and Feed Trade Association Rules. I am also satisfied that the arbitrator denied both sides the opportunity to make representations. He had not acted unfairly but acted even handedly and cited before me was *Tan Tong Meng (Pte) Ltd. v. Artic Builders & Co. (Pte) Ltd.* [1986] 2 MLJ 241.

The other point raised by the applicant is that the Rules and Constitution of PORAM are *ultra vires* the Arbitration Act especially s. 32 in providing for exclusion of the Arbitration Act. I need only say that in this case the parties having agreed to be bound by the PORAM FOB Rules of Contract, the applicant also agreed to the exclusion of Arbitration Act 1952 when contrary to PORAM's Rules.

On the applicants' complaint that the respondent never commenced the arbitration but was given an Award in his favour, I find no merit in this contention of the applicant that any party was misled by the communication from Alcan Commodities Sdn. Bhd. The alleged misnomer was taken only after 5 years. I reject the applicant's argument on this point.

The applicant contended that the submission dated the 21 November 1988 by Alcan Commodities Sdn. Bhd. is marked "Without Prejudice" and therefore cannot be used by the Appeal Board.

In this case the documents so marked was put in by the respondents. At the Appeal Board, pursuant to the direction of the Appeal Board, at its proceedings on 18 October 1988, the respondent put in the offending "Without Prejudice" submissions in response to submissions filed by the applicants' solicitors. Once the letter of 21 January 1988 was produced, the "without prejudice" cloak is lifted and the Appeal Board could peruse and rely on the documents. I also find no merit in the point raised before me.

On the issue that the amendment of the Award of the PORAM Appeal Board is wrong, unlawful and contrary to the rules of natural justice, the Umpire, when making the Award on 1 March 1988, granted interest at 12% p.a. to run 14 days after date of Award until realisation but the Appeal Board, when delivering its Award on 5 July 1989, stated it was upholding the Award but ordered costs to be paid by the applicant. The respondents sought clarification *vide* their letter of 14 July 1989. The interest of 12% per annum running 14 days after the Award granted by the Umpire would have continued as the Appeal Board upheld the entire Award, the Appeal Board did on 16 October 1989 confirm the interest granted by the Umpire until 5 July 1989 and thereafter reduced it to 10% p.a. The Appeal Board's 16 October 1989 letter was copied to applicant but the applicant never complained. On this point I find that if the Appeal Board has the power to give a decision on the appeal, then it must by implication has that power to give an order on interest. I do not find the applicants' argument to have any merit.

On issue of format for initiation of Arbitration Proceedings under the PORAM Rules for Arbitration and Appeal, the applicants submitted that the form in Appendix I of the Rules must be filled by both parties. I am satisfied that the Appeal Board has correctly at page 4 of its Award explained that the Form in Appendix I is expressly to be used by parties who had not initially agreed to be bound by the PORAM Rules but have certain disputes arising out of their contract and wish to refer the same to Arbitration under PORAM. The applicants and respondents have by agreeing to contract on

PORAM FOB terms agreed to arbitrate under the PORAM Rules for Arbitration and the Rules require no further form/letter to be submitted.

PORAM FOB contract not signed by applicant and respondent.

On the allegation that in effect there was no arbitration agreement because a PORAM FOB contract was not signed by both parties.

The answer to this allegation is that it is sufficient and it was so in this case that the Contract Notes issued specifically provide that the PORAM FOB contract applies and I say that mere incorporation by reference suffices.

Objections of Fact

Under this heading the applicant complained:

(i) Waiver of time period.

Applicant says that the Umpire did not adhere to the time limit in reaching his decision and the respondent also failed to commence the Arbitration Proceedings within the required period.

After the closure of the proceedings on 26 January 1988, the Umpire made his Award on 1 March 1988. That award is outside the time limit required by s. 4 4 r. 1(1) requiring award to be made within 30 days of the closure of proceedings but s. 1 r. 5 give the Umpire the sole discretion to waive any of the time limits set thereunder.

The applicant raised the matter that the Award was made out of time before the Appeal Board and the Board held that the Award was good in view of Rule 5 above.

The other issue raised by the applicant under this head is that Arbitration was commenced on 8 June 1987 when the goods were received on 6 April 1987 at Port Klang. The initiation of the proceedings was contrary to s. 1 r. 3(2).

The applicant says there can be no waiver of the 21 days period unless the applicant knows of such provision for such rule. The Appeal Board has decided in their Award that the dispute was not merely a dispute as to quality but also a product dispute. As already stated under s. 1 r. 5 it is within the Umpire's sole discretion to waive the time limits.

In this Arbitration it was established that the product supplied by the applicant was not palm acid oil but was instead a different product which was palm sludge oil obtained from sludge oil. As to the product being entirely different, the respondent cited *Pinnock Brothers v. Lewis And Peat, Limited* [1923] 1 KB 690 where it was held that copra cake mixed with castor beans are not copra cake - both products being different.

(ii) Re-submission of case by the respondent.

As regards this issue, I find that the Appeal Board considered the allegation of "re-submission" and the Appeal Board found that the so-called "re-submissions" were made available to the applicant on 26 January 1988. This was sufficient time before the award was finally made on 1 March 1988. I am satisfied that under the PORAM Rules for Arbitration and Appeal, parties agreed to be bound, in particular s. II r. IV (5) provide that the Arbitrator and Umpire shall decide which party is to provide further statements and may fix the time limit for parties to comply. I find that the telex of 21st/25th January 1988, where the respondent was required to supply the contract for sale of palm sludge oil with their buyers in Hamburg and the subsequent telex of 21 January 1988 by PORAM reconfirms the need for these documents supporting the respondents' claim by 25 January 1988, to be following proper procedure of s. II r. IV(5).

(iii) On the issue and allegation that the Arbitrators including the Umpire and the Appeal Board failed to adhere to the issue in making their claim and award, I found merit in the submission of the respondent that the Arbitrators', Umpire and Appeal Board had before them the Palm Oil Research Institute of Malaysia's (PORIM) analysis on the sample of the product sold by the applicant to the respondent and confirmed that the product was not palm acid oil but was instead palm sludge oil. I also agree with the contention that it was a term of PORAM FOB contracts that in the implementation and working out of this contract that analysis by PORIM is final. The methods adopted as to the obtaining of samples to enable PORIM to carry out the analysis has not been unfair to any party. The analysis has been on samples provided by both parties through surveyors. Before coming to its decision as to the product sold the Arbitrators and Umpire conducted a thorough and indepth investigation before coming to its conclusion.

(iv) The applicant raised the issue of Free on Board contract in the applicant's submission.

On this issue I note that the applicant had referred to their telex of 17 July 1987 to PORAM admitting that they had contracted on PORAM FOB terms.

I am satisfied that is the answer I would accept and the applicant cannot be heard now to say otherwise.

(v) Under this issue of test conducted improperly, I have already decided on this issue as in item (iii) above and I give the same answer that the test was conducted properly.

(vi) The allegation of the applicant that the Chairman of the Appeal Board had a pecuniary interest in the matter and because of his bias had misconducted himself in sitting on the Appeal Board.

I am satisfied that the applicant had not been able to show such interest or bias. I am satisfied that the issue on the possibility of such allegation had been considered by the Appeal Board and the Appeal Board stated that it must be remembered that PORAM provides for consideration of disputes by members of the same trade and in the circumstances it was natural for members to know and have dealings with each other. This is a far cry from saying that either the Umpire or the Chairman of the Appeal Board had a direct interest in the matter being arbitrated upon or in the parties to the Arbitration.

I find that the applicant had failed to show an error on the face of the Award to entitle them to set aside the Award. I therefore grant the order sought by the respondent in terms of enclosure (9) with costs to the respondent.

SYED MAHADZIR BIN SYED ABDULLAH

v.

KETUA POLIS NEGARA & ANOR.

HIGH COURT, PENANG
TUAN VINCENT NG KIM KHOAY J.
[CIVIL SUIT NO. 357 OF 1982]
18 JUNE 1994

ADMINISTRATIVE LAW: Plaintiff seeking declaration that his compulsory retirement as a police inspector is of no effect and for consequential orders - Whether recommendation of the Medical Board relied upon by the defendant to retire the plaintiff was equivocal and thereby defective - Whether there was a breach of natural justice in that the plaintiff's fate was discussed behind his back - Whether plaintiff was given an opportunity to challenge the recommendations.

The plaintiff, a police inspector, was retired pursuant to ss. 8(2)(d) & 10(5) of the Pensions Ordinance 1951 (the Ordinance) after a Medical Board duly convened under Orders 18, 19 and 20 of the General Orders (Chapter F) had found the plaintiff to be suffering from the condition known as 'schizophrenia', an infirmity of the mind which rendered him incapable of discharging the duties of his office.

The plaintiff sought, a declaration that his retirement is of no effect and that he is still a member of the public service, and an order that the defendants do pay to him all arrears of pay, allowance and other emoluments due and owing to him from the date of the said purported retirement.

The plaintiff contended that the recommendation by the Medical Board which was relied upon by the defendant was equivocal in that while it recommended that the plaintiff be boarded out on psychiatric grounds, it went on to recommend further that the plaintiff "be placed in any position not requiring the handling of firearms eg. in administration". In the circumstances Counsel submitted that the recommendation was therefore defective and the decision to retire the plaintiff was null and void.

The plaintiff also contended that there was a breach of natural justice in that his fate was discussed behind his back and he was not given an opportunity to challenge the recommendations of the Medical Board.